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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,299	12/01/2003	Mark L. Anderson	01639.000014.	6104
5514	7590	10/31/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			MCCORMICK EWOLDT, SUSAN BETH	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/726,299	ANDERSON ET AL.	
	Examiner	Art Unit	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 31 August 2005.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 20-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 20-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

<p>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</p>	<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>
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**DETAILED ACTION**

The amendment of August 31, 2005 is hereby acknowledged and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant elected the species, grape seed extract, in the response filed January 11, 2005.

**Claims Pending**

Applicant has cancelled claims 1-19 and has added new claims 20-23. Claims 20-23 will be examined.

**Claim Rejections - 35 USC § 102**

Claims 20-23 are rejected under 35 U.S.C. 102(b) as being unpatentable by Murad (US 6,296,880).

Murad discloses using grape seed extract and green tea extract in treating acne. Murad also discloses using 1, 3butylene glycol in the composition which is applied topically (column 4, lines 25-26; column 6, lines 37-40, 54-59 and Example 2). However, Murad does not disclose specifically inhibiting the growth of *Propionibacterium acnes*. This composition would inherently inhibit the growth since grape seed extracts and green tea extract are considered antimicrobial and antibacterial functions. Thus, by teaching using grape seed extract and green tea extract and 1, 3butylene glycol, Murad teaches the limitation of claim 20.

**Claim Rejections - 35 USC § 103**

Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murad (US 6,296,880) in view of Murad (5,962,517).

Murad (US 6,296,880) discloses using grape seed extract and green tea extract in treating acne. Murad also discloses using 1, 3butylene glycol in the composition which is applied topically (column 4, lines 25-26; column 6, lines 37-40, 54-59 and Example 2). However, Murad does not disclose specifically inhibiting the growth of *Propionibacterium acnes*. Murad

(5,962,517) discloses that compositions containing grape seed are useful against acne caused by *Propionibacterium acnes* (see column 1, lines 60-63 and column 11). Thus, a person of ordinary skill in the art would reasonably expect that the acne composition of Murad (US 6,296,880) could be used to treat acne specifically caused by *Propionibacterium acnes*.

Based on this reasonable expectation of success, one of ordinary skill in the art would be motivated to use grape seed, green tea and 1, 3butylene glycol for the treatment of acne caused by *Propionibacterium acnes*.

Summary

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (571) 273-8300.

Art Unit: 1655

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

*Susan D. Coe*

10-24-05

**SUSAN COE  
PRIMARY EXAMINER**